IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2676 of 2002

Mumbai Kamgar Sabha .. Petitioner

versus

M/s.Purshottam Motor Co. & ors. .. Respondents

...

Mr.P.M. Patel for the petitioner.

Mr.A.M. Mathani with R. Nerlekar for the respondents.

CORAM : D.G. KARNIK,J.

DATED : 7th June 2005.

P.C.:

1. Heard learned counsel for the parties.

2. This Writ Petition is directed against the judgement and order dated 10th June 2002 passed by the Member, Industrial Court, Mumbai dismissing the petitioner's application filed u/s.50 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act 1971 (for

short "MRTU and PULP Act).

3. The petitioner is a trade union espousing the cause of two of its workmen. The concerned two workmen were employed by respondent no.1 firm of which respondent no.2 is the partner. According to the petitioner, the respondents failed to pay salary of the two workmen and thereby committed an unfair labour practice mentioned in entry no.9 of the Schedule IV of the MRTU & PULP Act. The petitioner therefore filed a complaint, bearing ULP No.125 of 2001, in the Industrial Court, Mumbai for recovery of salary of the two workmen. Before the Industrial Tribunal, respondents offered to pay 50% of the salary alleging that other 50% was payable by the other partner.

4. The petitioner agreed to accept the 50% of the salary without prejudice to its right to claim the full salary and accordingly by an order dated 2nd March 2001, the Industrial Tribunal permitted the respondents to deposit 50% of the salary and permitted the petitioner to withdraw the same without prejudice to its rights and contentions for recovery of the full salary. Thereafter, the matter was

referred to the Lok Adalat wherein a compromise was arrived at between the parties and terms were also reduced to writing which (Exhibit CU-1) was filed before the Lok Adalat. The matter was thereafter placed before the Industrial Tribunal and the Industrial Tribunal passed an order in terms of the compromise Exhibit CU-1. It stated therein that the respondent no.2 would pay 50% of the wages.

5. According to the petitioners, the respondents did not pay the amount as per the compromise. The petitioner therefore filed an application u/s.50 of the MRTP & PULP Act for recovery of the money. Application was resisted by the respondents on the ground that the compromise did not specify the exact amount of salary per month, that by the application the petitioners had claimed apart from the basic salary, dearness allowance, house rent allowance as also the leave travel allowance, bonus and leave salary which did not form part of the salary. The respondents further contended that in an application u/s.50 of the MRTP & PULP Act, the Tribunal had no jurisdiction to determine the quantum of the amount and it could pass an order u/s.50 only if the amount was predetermined. It was not entitled to make even

a simple arithmetic calculations about the computation of the salary as per the compromise. Relying upon the judgement of the learned Single Judge of this Court in V. Ramnathan Vs. Hindustan Lever Ltd. Mumbai & Anr. reported in 2001 I CLR 231. The learned Industrial Tribunal upheld the objection and held that an application u/s.50 of the MRTP & PULP Act was not maintainable as the amount was determined. It held that since the amount was disputed, the Tribunal had no jurisdiction to determine the quantum of the salary and the amount due and payable to the petitioner workmen. In this view of the matter, the Industrial Tribunal dismissed the application.

6. Learned counsel for the petitioner invites my attention to a subsequent judgement of the Division Bench of this Court rendered in Ultra Drytech Engineering Ltd. & Anr. Vs. Vaibhav Laxman Suravkar & Anr. (reported in 2005 I CLR 26). In the said decision, the Division Bench overruling the decision in V. Ramanathan Vs. Hindustan Lever Ltd. (Supra) and has held that section 50 of the MRTU & PULP Act permits arithmetic calculations to be made by the Court for the purpose of granting a relief to

a party. Undoubtedly, when the liability is disputed, it cannot be determined in an application u/s.50. However, where the liability to pay salary is admitted - or held to be proved in an earlier adjudication - an application u/s.50 would be maintainable though the exact amount of the salary has not been computed. Once the liability to pay the salary is proved, simple arithmetic calculations would be required to be made for computing the amount for the period for which the salary is claimed. This certainly can be done by the Court in an application u/s.50 of the MRTU & PULP Act. In view of the law authoritatively pronounced by the Division Bench of this Court, the judgement of the Industrial Tribunal declining to grant relief on the ground that it had no jurisdiction to compute the claim made for salary of the workmen even by making arithmetic calculations is contrary to law.

7. Since the correctness of the calculations is disputed, the matter would have to be sent back to the Industrial Court for the purpose of making of the arithmetic calculations.

8. In the circumstances, petition is allowed and

the matter is remanded back to the Industrial Court for the purpose of deciding the petitioners' application afresh in the light of the observations made in this judgement.

9. Rule made absolute to the aforesaid extent.

D.G. KARNIK, J